

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 96-0651 ST**

**Sales and Use Tax**

**For The Tax Periods: 1993 through 3/31/1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

I. **Sales/Use Tax – Manufacturing Equipment Exemption:** Pit Loader

**Authority:** IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, IC 6-2.5-5-3(b)

Taxpayer protests the assessment of use tax on the purchase of a pit loader used in the taxpayer's production process.

II. **Sales/Use Tax – Manufacturing Equipment Exemption:** Substance used in production

**Authority:** IC 6-2.5-5-3

Taxpayer protests the assessment of use tax on purchases of a substance used in trucks to facilitate dumping of materials.

III. **Sales/Use Tax – Casual Sale:** Purchase of a Dump Truck

**Authority:** 45 IAC 2.2-1-1

Taxpayer protests the assessment of use tax on purchase of a dump truck.

**STATEMENT OF FACTS**

Taxpayer operates a stone quarry. Taxpayer extracts and processes stone, sand, asphalt and other materials.

I. **Sales/Use Tax – Manufacturing Equipment Exemption:** Pit Loader

**DISCUSSION**

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, “an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.”

Pursuant to IC 6-2.5-5-3(b), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. Subsequent to the audit period, audit has determined that the particular pit loader at issue was used directly in the taxpayer’s direct production process. The pit loader is exempt from tax pursuant to IC 6-2.5-5-3(b)

**FINDING**

Taxpayer’s protest is sustained.

II. **Sales/Use Tax – Manufacturing Equipment Exemption:** Substance used in production

**DISCUSSION**

Pursuant to IC 6-2.5-5-3(b), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Taxpayer argues that a substance used to allow materials to slide out of dump trucks should be exempt as a material used in its production process. This substance is directly used in direct production of other tangible personal property.

**FINDING**

Taxpayer’s protest is sustained.

III. **Sales/Use Tax – Casual Sale:** Purchase of a Dump Truck

**DISCUSSION**

Taxpayer argues that its purchase of a dump truck for use on the premises at the quarry should be exempt as a casual sale. Taxpayer argues that neither the seller, nor the purchaser, is in the

business of buying or selling motor vehicles. However, taxpayer's purchase cannot be exempt as a casual sale pursuant to 45 IAC 2.2-1-1, which states:

“The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles.”

Taxpayer's purchase of the motor vehicle at issue here is subject to tax. Taxpayer argues furthermore, that the truck is not used on the highway and is used only on the premises of the quarry. Regardless of its use, the truck is still subject to tax.

**FINDING**

Taxpayer's protest is denied.